SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 213.

A. D. JAMES, UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF KENTUCKY, AND THE UNITED STATES, APPELLANTS,

vs.

HENRY BOWMAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

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1 Proceedings of the district court of the United States for the western district of Kentucky, at a regular term begun and held at the Federal court hall, in the city of Louisville, on Monday, October 14th, A. D. 1901.

Present, Honorable Walter Evans, judge.

In re Henry Bowman, ex parte.

This day came Henry Bowman, by W. B. Dixon, his counsel, and filed his petition herein, and on his motion it is ordered that a writ of habeas corpus do issue directed to the United States marshal for the western district of Kentucky, returnable November 16, 1901.

The petition above referred to is as follows:

To the honorable district court of the United States for the western district of Kentucky:

PETITION FOR WRIT OF HABEAS CORPUS.

The petitioner, Henry Bowman, respectfully shows to this honorable court that he is unjustly and unlawfully detained and imprisoned by the marshal of the United States for the western district of Kentucky, by virtue of a warrant of commitment issued by the clerk of the United States district court for the western district of Kentucky, which said writ of commitment, issued on and by virtue of an indictment numbered 6734, pending in said court against this petitioner and charging him with having prevented, hindered, controlled, and intimidated another from exercising and in exercising the right of suffrage to whom that right is guaranteed by the fifteenth amendment to the Constitution of the United States, by means of bribery, and in violation of section 5507 of

2 the Revised Statutes of the United States, which section is contrary to and in violation of the Constitution of the United States and is void.

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of habeas corpus, to be directed to said marshal of the United States for the western district of Kentucky, may issue in this behalf, so that your petitioner may be forthwith brought before this court to do, submit to, and receive what the law may require.

his
HENRY x BOWMAN, *Petitioner.*
mark

UNITED STATES OF AMERICA,
Western district of Kentucky:

Henry Bowman, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the same and knows the contents thereof, and that the statements therein made are true as he verily believes.

his
HENRY x BOWMAN, *Petitioner.*
mark

Subscribed and sworn to this 14th day of November, 1901.

HENRY F. CASSIN, *U. S. Comr.*

The writ above referred to is as follows:

The President of the United States of America to the marshal of the United States for the western district of Kentucky:

You are hereby commanded to produce before the judge of the district court of the United States for the western district of Kentucky, at Louisville, on the 16th day of November, 1901, at 10 o'clock in the forenoon, the body of Henry Bowman, illegally detained by you, as is alleged, together with the nature and cause of his detention, and then and there to abide such orders as may be made in the premises, and have you then and there this writ; and this you shall in no wise omit, under the penalty in such case demanded.

Witness the honorable Walter Evans, judge of the said district court of the United States, at the city of Louisville, this 14th day of November, 1901, and of our Independence the 126th year.

[SEAL.] THOS. SPEED, *Clerk.*

3 Upon which appeared the following return:

I hereby accept service of the within writ of habeas corpus: This Nov. 14, 1901.

A. D. JAMES, *U. S. Marshal.*

And on the 16th day of November, 1901, came the respondent, A. D. James, United States marshal for the western district of Kentucky, and in open court filed his return in writing to the writ of habeas corpus herein. He also produced in court the body of the relator, Henry Bowman, and thereupon the relator, Henry Bowman, by his counsel, William B. Dixon, produced and filed a reply to the said response, and respondent, by R. D. Hill, United States district attorney for the western district of Kentucky, filed a demurrer to said reply, and this cause being submitted on said demurrer, and upon said motion of said Henry Bowman, by his counsel, W. B. Dixon, for judgment of discharge upon the writ, the return thereof, the reply thereto, and the demurrer to said reply, to which the respondent, by his attorney, R. D. Hill, United States district attorney, as aforesaid, objected; and this cause being now set down for hearing, and the matters of law arising on said demurrer and motion having been argued by said counsel, and the court being fully advised thereof, delivered a written opinion, which is ordered to be filed, and made a part of this record, and in accordance therewith and in obedience to the ruling of the circuit court of appeals referred to therein, which holds section 5507 of the Revised Statutes to be repugnant to the Constitution of the United States, it is adjudged by the court that the imprisonment and detention of the relator, Henry Bowman, by the respondent, A. D. James, United States marshal for the western district of Kentucky, to answer the indictment referred to and made part of said response, is in violation of the Constitution and laws of the United States; and it is therefore, and in obedience to the said ruling of said circuit court of appeals, ordered that the relator, Henry Bowman, be, and he is hereby, discharged of the premises, and that he go hence without day. To all of which the said respondent, A. D. James, and the United States of America, each excepts.

4 The response above referred to is as follows:

To the honorable the United States district court for the western district of Kentucky:

In the matter of Henry Bowman, on proceedings for habeas corpus.

The undersigned, A. D. James, United States marshal for the western district of Kentucky, for response and return to the writ of habeas corpus served on him herein, says he has in his custody the said Henry Bowman, whom he presents before this honorable court, as directed by the writ, and for the cause and time of his detention and imprisonment says that on the first day of December, 1900, a grand jury, which had then and there been duly and legally impaneled and sworn in and for the district of Kentucky, and by the United States district court of said district at Louisville, Kentucky, returned and filed in open court an indictment against Harry Weaver and Henry Bowman, a duly certified copy of which indictment is filed herewith, as part hereof, marked "A." That said indictment is now pending in the United States district court for the western district of Kentucky and has never been tried, stricken from the docket, or disposed of in any way.

Your respondent further states that on the 14th day of November, 1901, an order was entered by the U. S. district court in said case of United States vs. Harry Weaver and Henry Bowman, directing that said Henry Bowman be committed to the custody of your respondent as United States marshal aforesaid, in default of a bail bond in the sum of $750.00 for the appearance of said Henry Bowman in said court at the marshal term thereof, 1902, to answer the charge against him, contained in said indictment, a duly certified copy of which order is filed herewith as part hereof, marked "B."

Your respondent states that the said Henry Bowman is now in his custody, and is being detained by your respondent, under and by virtue of said order of court, and under and by virtue of said indictment. That in and by said indictment the said Harry Weaver and Henry Bowman

5 are duly and legally charged with having wilfully, knowingly, and unlawfully prevented, hindered, and controlled Louis Anderson, Phil Bosket, Link Birdine, William Wagner, C. C. Overall, D. Blackburn, Dan Louis, James McGary, Thomas Turner, Ed Whallen, and divers other persons to the grand jurors unknown, citizens and voters of the city of Louisville, State of Kentucky, from exercising and in exercising the right of suffrage and the right to vote at an election duly and legally held in Jefferson County, in the State of Kentucky, on the 8th day of November, 1898, and in the Fifth Congressional district of the State of Kentucky, which said district was then and there composed of the county of Jefferson, in said State, by means of bribery, and by then and there bribing and giving to the said Louis Anderson, Phil Bosket, Link Birdine, William Wagner, C. C. Overall, D. Blackburn, Dan Louis, James McGary, Thomas Turner, Ed Whallen, and said divers other persons to the grand jurors unknown, lawful money of the United States, not to vote and not to exercise the right of suffrage at said election; that said Harry Weaver and Henry Bowman did then and there bribe and give to the said Louis Anderson, Phil Bosket, Link Birdine, William Wagner, C. C. Overall, D. Blackburn, Dan Louis,

James McGary, Thomas Turner, Ed Whallen, and divers other persons to the grand jurors unknown, and each of them, fifty cents in lawful money of the United States, a further description of which said money was to said grand jurors unknown, not to exercise the right of suffrage, and not to vote at said election.

And your respondent submits the question to your honor and the courts regularly appointed under the law of the United States for the exercise of judicial functions, and asks that the writ against him be discharged.

A. D. JAMES.

Subscribed and sworn to before me this November 16, 1901.

HENRY F. CASSIN,
U. S. Comr. Western Dist. of Ky.

6 The Exhibit A above referred to is as follows:

UNITED STATES OF AMERICA,
District of Kentucky, set:

In the district court of the United States for the sixth judicial circuit and district of Kentucky, held at Louisville, Kentucky, October term, in the y'ar of our Lord nineteen hundred.

The grand jurors of the United States of America, impaneled and sworn and charged to inquire in and for the district of Kentucky on their oaths present, that on the eighth day of November, in the year of our Lord eighteen hundred and ninety-eight, in Jefferson County, in the district aforesaid, and within the jurisdiction of this court, an election was duly and legally held under and pursuant to the laws of the United States and of the State of Kentucky in all of the voting precincts of the Fifth Congressional district of Kentucky, and that the said Fifth Congressional district of Kentucky was then and there composed of the county of Jefferson, in Kentucky, and that Louis Anderson, Phil Bosket, Link Birdine, William Wagner, C. C. Overall, D. Blackburn, Dan Louis, James McGary, Thomas Turner, Ed Whallen, and divers other persons whose names are to the grand jurors aforesaid unknown, were then and there men of African descent, colored men, negroes, and not white men, and were then and there male citizens of the United States and of the State of Kentucky, of the age of twenty-one years and upwards, and were then and there duly and legally registered under the laws of the United States and of the State of Kentucky, and were then and there duly and legally qualified under the laws of the United States and of the State of Kentucky to vote at said election then and there held for the election of said Representative in said 56th Congress of the United States from the said 5th Congressional district of Kentucky, and were then and there duly and legally qualified under the laws of the United States and of the State of Kentucky to vote for a Representative in said 56th Congress of the United States from said 5th Congressional district of Kentucky, as Harry Weaver and Henry Bowman then and there knew; and that the said Louis Anderson, Phil Bosket, Link Birdine, William Wagner, C. C.

7 Overall, D. Blackburn, Dan Louis, James McGary, Thomas Turner, Ed Whallen, and the said divers other persons whose names are to the grand jurors aforesaid unknown, were then and

there residents of the State of Kentucky and of the county of Jefferson, and had then and there resided in said State for more than one year and in said county of Jefferson for more than six months next preceding said election; and that the said Louis Anderson was then and there a resident of the fifteenth voting precinct in the Fifth Ward in the city of Louisville, in said county and Congressional district, and had then and there resided in said fifteenth voting precinct for more than sixty days next preceding said election, and was then and there duly and legally registered under the laws of the United States and the State of Kentucky in said fifteenth voting precinct, and was then and there entitled to vote in said fifteenth voting precinct at said election; and that the said Phil Bosket was then and there a resident of the fifteenth voting precinct in the Fifth Ward in the city of Louisville, in said county and Congressional district, and had then and there resided in said fifteenth voting precinct for more than sixty days next preceding said election, and was then and there duly and legally registered under the laws of the United States and of the State of Kentucky in said fifteenth voting precinct, and was then and there entitled to vote in said fifteenth voting precinct at said election;

And that the said Link Birdine was then and there a resident of the sixteenth voting precinct in the Fifth Ward in the city of Louisville, in said county and Congressional district, and had then and there resided in said sixteenth voting precinct for more than sixty days next preceding said election, and was then and there duly and legally registered under the laws of the United States and of the State of Kentucky in said sixteenth voting precinct, and was then and there entitled to vote in said sixteenth voting precinct at said election;

And that the said William Wagner was then and there a resident of the fifteenth voting precinct in the Fifth Ward in the city of Louisville, in said county and Congressional district, and had then and there resided in said fifteenth voting precinct for more than sixty days next preceding said election, and was then and there duly and legally registered
8 under the laws of the United States and of the State of Kentucky in said fifteenth voting precinct, and was then and there entitled to vote in said fifteenth voting precinct at said election;

And that the said C. C. Overall was then and there a resident of the thirtieth voting precinct in the Third Ward in the city of Louisville, in said county and Congressional district, and had then and there resided in said thirtieth voting precinct for more than sixty days next preceding said election, and was then and there duly and legally registered under the laws of the United States and of the State of Kentucky in said thirtieth voting precinct, and was then and there entitled to vote in said thirtieth voting precinct at said election;

And that the said D. Blackburn was then and there a resident of the twenty-first voting precinct in the Fifth Ward in the city of Louisville, in said county and Congressional district, and had then and there resided in said twenty-first voting precinct for more than sixty days next preceding said election, and was then and there duly and legally registered under the laws of the United States and of the State of Kentucky in said twenty-first voting precinct, and was then and there entitled to vote in said twenty-first voting precinct at said election;

And that the said Dan Louis was then and there a resident of the fifteenth voting precinct in the Fifth Ward in the city of Louisville, in said county and Congressional district, and had then and there resided in said fifteenth voting precinct for more than sixty days next preceding said election, and was then and there duly and legally registered under the laws of the United States and of the State of Kentucky in said fifteenth voting precinct, and was then and there entitled to vote in said fifteenth voting precinct at said election;

And that the said James McGary, Thomas Turner, and Ed Whallen were then and there residents of the fourth voting precinct in the Eighth Ward in the city of Louisville, in said county and Congressional district, and had then and there resided in said fourth voting precinct for more than sixty days next preceding said election, and were then and there duly and legally registered under the laws of the United States and of the State of Kentucky in said fourth voting precinct, and were
9 then and there entitled to vote in said fourth voting precinct at said election;

And that each of said divers other persons, citizens, and voters as aforesaid, whose names are to the grand jurors aforesaid unknown, was then and there a resident of one of the voting precincts in said congressional district, and had then and there resided in said voting precinct for more than sixty days next preceding said election, and was then and there duly and legally registered under the laws of the United States and of the State of Kentucky in and was then and there entitled to vote at said voting precinct at said election, but that the voting precinct in which each of said divers other persons whose names are to the grand jurors aforesaid unknown, then and there resided, and had then and there so as aforesaid resided, and in which each of said divers other persons whose names are to the grand jurors aforesaid unknown, were then and there registered and entitled to vote at said election, are unknown to the said grand jurors, as the said Harry Weaver and Henry Bowman then and there knew; and that the said Louis Anderson, Phil Bosket, Link Birdine, William Wagner, C. C. Overall, D. Blackburn, Dan Louis, James McGary, Thomas Turner, Ed Whallen, and said divers other persons whose names are to the grand jurors aforesaid unknown, citizens and voters as aforesaid, were then and there persons to whom the right of suffrage and the right to vote was then and there guaranteed by the fifteenth amendment to the Constitution of the United States, as the said Harry Weaver and Henry Bowman then and there knew.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said Harry Weaver and Henry Bowman did then and there unlawfully, wilfully, and knowingly prevent, hinder, control, and intimidate the said Louis Anderson, Phil Bosket, Link Birdine, William Wagner, C. C. Overall, D. Blackburn, Dan Louis, James McGary, Thomas Turner, Ed Whallen, and said divers other persons to the grand jurors aforesaid unknown, citizens and voters as aforesaid, from then and there exercising and in then and there exercising the right of suffrage and the right to vote at said election by means of bribery, and by then and there bribing and giving to the said Louis Anderson, Phil Bosket, Link Birdine, William Wagner, C. C. Overall,

D. Blackburn, Dan Louis, James McGary, Thomas Turner,
10 Ed Whallen, and divers other persons to the grand jurors aforesaid unknown, citizens and voters as aforesaid, lawful money of the United States, not to exercise the right of suffrage at said election; and that the said Harry Weaver and Henry Bowman did then and there bribe and give to the said Louis Anderson, Phil Bosket, Link Birdine, William Wagner, C. C. Overall, D. Blackburn, Dan Louis, James McGary, Thomas Turner, Ed Whallen, and the said divers other persons to the grand jurors aforesaid unknown, citizens and voters as aforesaid, and each of them fifty cents in lawful money of the United States, a further description of which said money is to the grand jurors aforesaid unknown, not to exercise the right of suffrage and not to vote at said election.

Against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided.

R. D. HILL,
U. S. Attorney, District of Kentucky.

Witnesses: Louis Anderson, Phil Bosket, William Wagner, Dan Louis, D. Blackburn, James McGary, Thomas Turner, Ed Whallen, C. C. Overall, Isaac Curtis, George Richardson, Willis Smith, Ben Kendall, Elias Jenkins.

The Exhibit B above referred to is as follows:

In the district court of the United States for the western district of Kentucky, November 14th, 1901.

UNITED STATES
vs.
HARRY WEAVER AND HENRY BOWMAN.

It is further ordered by the court that the defendant, Henry Bowman, be committed to the custody of the marshal in default of bail in the sum of $750.00 for his appearance herein at the next term of this court.

11 The reply above referred to is as follows:

To the honorable the United States District Court for the Western District of Kentucky:

In the matter of Henry Bowman, on proceedings for habeas corpus.

REPLY.

The petitioner, Henry Bowman, for reply to the response of A. D. James, United States Marshal for the Western District of Kentucky, filed herein on this day, says that the indictment, copy of which is made a part of the response of said A. D. James, is based on section 5507 of the Revised Statutes of the United States, which section reads as follows:

"Every person who prevents, hinders, controls, or intimidates another from exercising or in exercising the right of suffrage, to whom that right is

guaranteed by the fifteenth amendment to the Constitution of the United States, by means of bribery or threats of depriving such person of employment or occupation or of ejecting such person from a rented house, lands, or other property, or by threats of refusing to renew leases or contracts for labor, or by threats of violence to himself or family, shall be punished as provided in the preceding section."

Now the said petitioner alleges that said section is in violation of the Constitution of the United States; that the Congress had no power, under the Constitution of the United States, to enact said section, or any part thereof, and that same is absolutely void and of no effect.

his
HENRY x BOWMAN.
mark

Subscribed and sworn to before me this 16th day of November, 1901.

HENRY F. CASSIN,
U. S. Commissioner.

12 The demurrer to reply above referred to is as follows:

To the honorable the United States District Court for the Western District of Kentucky:

In the matter of Henry Bowman, on proceedings for habeas corpus.

DEMURRER TO REPLY.

Respondent, A. D. James, comes and demurs to the reply of Henry Bowman, because the facts stated in said reply are not sufficient to constitute a defense or a reply to the matters set out in the response of said James, and upon that the said James prays the judgment of the court.

A. D. JAMES.

Subscribed and sworn to before me this 16th day of November, 1901.

HENRY F. CASSIN,
U. S. Com'r.

The opinion above referred to is as follows:

13 [Not for publication.]

United States district court, western district of Kentucky.

In the matter of Henry Bowman, ex parte.

OPINION.

By the petition in this case, Henry Bowman prays that he may be discharged from the custody of the marshal upon the ground that his detention by that officer is in violation of the Constitution and laws of the United States. The petitioner is in the custody of the marshal under an order of commitment in default of bail to answer an indictment against him in this court wherein he is charged with an offense against the United States under section 5507 of the Revised Statutes, and which provision of the Statutes he insists is repugnant to the Constitution and void.

To certain indictments then pending in this court, among them being that of the United States vs. Lackey, demurrers were filed some time since, and the question of the constitutionality of sections 5507 and 5508, R. S., was very carefully considered and passed upon by me. Having, as a young man, gone through the most momentous period in the history of the country and the agitations and discussions then in progress, and which resulted in the adoption of the 13th, 14th, and 15th amendments, and having been thoroughly in sympathy with the efforts to do so, I felt some capacity from recollections of that agitation and of those discussions to interpret the spirit and purposes of the people which brought about the amendments themselves and the legislation enacted to enforce them. In my efforts to construe these laws I received some aid from those recollections, and after a very careful investigation of the whole subject, in an opinion then delivered in those cases, I said:

14 The indictment in the first of the cases named is for a violation of section 5507, and that in the second is for a violation of section 5508, of the Revised Statutes of the United States; all the aggrieved persons being men of color, of the African race, and the wrongs committed being charged to have been committed on account of that fact. A demurrer has been interposed to each indictment, and as a decision in both cases depends in a large measure upon the same principles, they may conveniently be disposed of in one opinion.

When the statutory provisions referred to are considered solely with reference to the meaning of the language used, and with regard to the general purpose to be accomplished, we find that Congress intended to protect the right of suffrage, and to prevent its abridgement or denial by prescribing, first, in section 5507, punishment for those who, by means of bribery or certain forms of threats, either prevented, hindered, controlled, or intimidated a described class of persons from exercising or in exercising the right of suffrage, namely, those persons, but only those persons, to whom that right was guaranteed by the Fifteenth amendment to the Constitution; and, second, in section 5508, by prescribing punishment for those who conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution or laws of the United States. There would be some hardihood in a serious contention that either of the objects disclosed by this analysis of the sections referred to was, per se, wrong, or fairly subject to any just criticism. On the contrary, those objects are manifestly just and commendable in the estimation of every right-thinking man. When we go further, and consider that the purpose, in some important respects, was to assist in guarding the right to vote so recently given by the nation itself to a certain class of its citizens, it suggests the reflection that free and fair elections, at which the honest, intelligent, and uncontrolled choice of the qualified voters of the community shall be fairly ascertained and announced, are the only sure foundations of free institutions and the only real guaranty of the liberties of the people. If the first are systematically denied or prevented, the

15 others may be sooner or later overthrown. True, under our form of government the State authorities must, for the most part, enforce and preserve these safeguards; but so essential to our happiness are honest and free elections, that if the Federal authorities, acting within

their proper sphere, can in any way help to secure them, they should not omit or neglect to do so. With these general propositions before us, we come to the consideration of the principal objection raised to the indictments, to wit, that Congress had no constitutional power to enact the legislation referred to; and we proceed to its investigation, but, with the exception of one case under section 5507, without any express adjudications to guide us upon the exact points involved in these cases.

On July 28, 1868, the Secretary of State proclaimed that the fourteenth article of amendments to the Constitution of the United States had been ratified by three-fourths of the States of the Union. The first section thereof emphatically declared that "all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside." The instantaneous effect of this was to make all the persons described in the first section citizens alike of the United States and of the States wherein they lived. It required no legislation by Congress to perfect this right. The amendment itself, of its own force, achieved the object. This much being accomplished, the people went further, and the momentous result was that on March 30, 1870, by a similar proclamation, the Secretary of State announced the ratification, by a like proportion of the States, of the fifteenth amendment to the Constitution, which is as follows:

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, nor by any State, on account of race, color, or previous condition of servitude.

"Section 2. The Congress shall have power to enforce this article by appropriate legislation."

It will be observed that the prohibition of this amendment extends equally to the denial and to any abridgment of the right to vote on account of race, color, etc. It must be admitted that this amend-
16 ment is, and was intended to be, the great charter of the negro's right to vote. It is the fountain source from whence alone it sprung and which alone gave it vitality in many of the States. In the exercise of the powers given by these two amendments Congress passed several acts which were deemed by it appropriate; but in the cases before us we are concerned only with the provisions of the act entitled "An act to enforce the rights of citizens of the United States to vote in certain States of this Union, and for other purposes," approved May 31, 1870 (16 Stat., 140), commonly called the "enforcement act," as those provisions now appear in the Revised Statutes. Certain sections of this celebrated enactment have been passed upon by the Supreme Court. Some of them have been repealed, and some of them, though changed in form, are now sections 2004, 5507, 5508, and 5509 of the Revised Statutes. No one of these has ever been repealed or further modified. They still remain parts of the body of the laws of the United States, and are in full vigor, unless they be such enactments as are not authorized by any grant to the Congress of power to pass them.

It is contended for the accused that Congress has no power, under the Constitution, to impose penalties upon acts done at an election held for State officers only, by which is meant an election for officers of the State, as distinguished from Presidential electors and Representatives in Congress; and it is urged that this court has no jurisdiction in the cases before

us because it plainly appears from the indictment that, in that sense, the offenses charged were all committed at an election at which only State officers were chosen. It seems to the court that this argument proceeds upon a misapprehension alike of the statutes themselves and of the charge made against the accused. They are charged with violating the laws of the United States and not those of the State. These laws of the United States are not intended to deal with elections at all, in any direct or proper sense, either to regulate, control, or protect them. What the statutes which are to be construed and applied in these cases are designed to accomplish is, first, by section 5507, to prevent the denial or the abridgment of the right to vote of certain citizens (that is to say, the hindering, controlling, or preventing the exercise of the right
17 of suffrage, by means of bribery or intimidation, on account of race, color, or previous condition of servitude), and, second, by section 5508, to punish every conspiracy to intimidate certain persons in the exercise of the right to vote on account of race, color, etc. These statutes relate, not to the election per se, but to the denial or abridgment of the right of suffrage, as it is secured by the laws of the United States, by certain means, namely, by bribery, intimidation, etc., for certain reasons, namely, on account of race, color, etc., and for conspiracies designed to defeat that right. Article I, sec. 4, of the Constitution gives Congress power to enact laws regulating the time, place, and manner of electing Representatives in Congress; and legislation may be based upon that section, in which event, of course, a statute having that purpose alone in view could only be applied when Representatives were elected. But Congress, under the fifteenth amendment, may also legislate to enforce and protect the rights given by that amendment, in which event the legislation may apply to any occasion when the act is committed by which the right to vote is denied or abridged on account of race, color, or previous condition of servitude. Overlooking this distinction will lead to some confusion in endeavoring to apply the decisions of the courts. The idea would at least be novel that the fifteenth amendment applied only to Congressional elections.

While, as we have shown, Congress may, under Article I, section 4, pass laws to regulate the election of Representatives in Congress, still to limit the right of Congress to that power would require a new reading of another very plainly expressed constitutional provision. The fifteenth amendment, within the scope of its purpose, is as wide as the right to vote itself. It expressly and unequivocally prohibits the denial or the abridgment of the right to vote at any election whatever—national, State, or municipal—on account of race, color, or previous condition of servitude. Its terms are general, and it is as admissible to exclude all elections from its operation as it is to exclude any. Within the limitations specified it applies to the elective franchise, the right to vote, whenever, wherever, and however exercised by the people. It is apparent and undeniable that the nation itself determined to take care that no such discrimina-
18 tion as that provided against should be made, and it not only adopted the amendment to prohibit it, but authorized the Congress to enforce the prohibition by appropriate legislation. The power of Congress under a less liberal but somewhat similar provision was clearly, and we may say finally, fixed by the Supreme Court of the United States

when it approved the words of the great Chief Justice in the case of McCulloch v. Maryland (4 Wheat., 316; 4 L. Ed., 579), presently to be noticed. As we have seen, part of this legislation remains upon the statute books. It has been there 30 years unrepealed. It has a beneficial purpose behind it, namely, the enforcement of a provision of the organic law; and the court of first instance would not be inclined to hold it invalid, does not have any predisposition to do so, and should not in any event do it, except under a strong persuasion that it certainly violated the Constitution. Indeed, it may be admissible to apprehend that if this legislation is swept away by judicial action, the entire fabric so carefully builded upon the fifteenth amendment may disappear. However, the question should be most carefully examined, because of its great importance, not only to the public generally, but to the defendants particularly. For that reason we have bestowed upon it the most painstaking consideration. We have already noticed generally the language of the statutes under which these indictments were found, and have pointed out the intention thereby at least to attempt to guard the rights of a certain class of citizens to vote without being discriminated against on account of race, color, etc., and have to some extent animadverted upon the importance of guarding the right of suffrage, and the free exercise thereof by all who are entitled to vote; and we may add that none of the provisions of any of the statutes referred to in any possible way interfere with or abridge the right of any citizen to vote as he pleases. The purpose, probably the most obvious purpose, of the legislation is to safeguard the right of citizens to the extent authorized by the fifteenth amendment. In doing this it interferes with the rights of none. It simply punishes those who unlawfully interfere with the rights of others. As we have indicated, this is, to say the least, a laudable design. The evident intention being to enforce and preserve the rights given
19 by the fifteenth amendment, it still remains to be seen whether Congress has exercised its acknowledged power in a constitutional and effective manner. The courts have had other portions of the act under consideration upon several notable occasions, the most conspicuous instances of which we will notice in somewhat chronological order:

The case of U. S. v. Cruikshank, reported in 25 Fed. Cas., 707, 1 Woods, 308, was decided by Mr. Justice Bradley, sitting in the circuit court. Much of what he said in his very strong opinion is instructive, but, as the case turned upon sections now not on the statute books, it is not so much in point as it would otherwise have been. That case, so far as it has any relevancy to these, was based upon section 4 of the act (later found in a greatly changed form in section 5506 of the Revised Statutes) and which has been repealed. Speaking generally, the learned justice said, at page 713, 25 Fed. Cas., and page 324, 1 Woods:

"I am inclined to the opinion that Congress has the power to secure that right, not only as against the unfriendly operation of State laws, but against outrage, violence, and combinations on the part of individuals irrespective of State laws. Such was the opinion of Congress itself in passing the law at a time when many of its members were the same who had consulted upon the original form of the amendment in proposing it to the States. And as such a construction of the amendment is admissible and the question is one at least of grave doubt, it would be assuming a

great deal for the court to decide the law, to the extent indicated, to be unconstitutional."

This part of the opinion will be found very important further along.

On page 715, 25 Fed. Cas., and page 329, 1 Woods, the justice also said:

"The sixth count charges a conspiracy to prevent and hinder certain citizens of the United States, who were of African descent and persons of color, in the exercise and enjoyment of their right to vote at any election to be thereafter held in the State of Louisiana, or in the parish of Grant, knowing they had such right to vote. A conspiracy to hinder a person from exercising his right to vote at any election is made indictable by the fourth section of the enforcement act; also by the sixth section read in connection with the first. Over the general subject of the right to vote in the States, and the regulation of said right, Congress, as we have seen, has no power to legislate. The fifteenth amendment relates only to discriminations on account of race, color, and previous condition of servitude, and, as we have before shown, is a prohibition against the making of such discriminations. The law on which this count is founded is not confined to cases of discrimination above referred to. It is general and universal in its application. Such a law is not supported by the Constitution. The charge contained in the count does not describe a criminal offense known to any valid and constitutional laws of the United States. It should at least have been shown that the conspiracy was entered into to deprive the injured persons of their right to vote by reason of their race, color, or previous condition of servitude. This count I also regard as invalid."

It will be seen that the court held that the sixth count in the indictment, which, in general terms, charged a conspiracy to hinder certain citizens of African descent, and who were in fact persons of color, in exercising the right to vote at any election in Louisiana thereafter to be held, but which failed to show that the conspiracy was entered into to deprive the injured persons of the right to vote on account of their race or color or previous condition of servitude was not good; so that, however wide the range of the court's observations, the real question decided was that the sixth count was insufficient in law for that reason. On a writ of error the case was taken before the Supreme Court, where the judgment was affirmed. From the report of the case in 92 U. S., 543; 23 L. Ed., 588, we get a somewhat clearer idea of the language of the sixth count. In passing upon it the court left no doubt about its position at that time, whether the Yarbrough and later cases indicated modifications or not. At pages 555, 556, 92 U. S., and page 592, 23 L. Ed., we find this language:

"In U. S. v. Reese, 92 U. S., 214; 23 L. Ed., 563, we hold that the fifteenth amendment has invested the citizens of the United States with a new constitutional right, which is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. From this it appears that the right of suffrage is not a necessary attribute of national citizenship, but that exemption from discrimination in the exercise of that right on account of race, etc., is. The right to vote in the States comes from the States, but the right of exemption from the prohibited discrimination

comes from the United States. The first has not been granted or secured by the Constitution of the United States, but the last has been."

And on page 557, 92 U. S., and page 593, 23 L. Ed., the court continues:

"According to the view we take of these counts, the question is not whether it is enough, in general, to describe a statutory offense in the language of the statute, but whether the offense has here been described at all. The statute provides for the punishment of those who conspire 'to injure, oppress, threaten, or intimidate any citizen, with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States.' These counts in the indictment charge, in substance, that the intent in this case was to hinder and prevent these citizens in the free exercise and enjoyment of 'every, each, all, and singular' the rights granted them by the Constitution, etc. There is no specification of any particular right. The language is broad enough to cover all."

It is important to bear in mind, first, that there was no charge that the acts done were done on account of the race, color, or previous condition of the injured persons, and, second, that what the court was then speaking about was not section 5 of the enforcement act, nor section 5507 of the Revised Statutes, which took its place.

At the same term at which the Cruikshank case was decided, the court had previously passed its judgment upon the case of U. S. v. Reese, 92 U. S., 214; 23 L. Ed., 563. In that case the indictment was likewise based upon the third and fourth sections of the enforcement act, and not upon the fifth, which is now invoked by the United States. The fourth section, as originally enacted, as already shown, was commuted,
22 with most important modifications, into section 5506 of the Revised Statutes, which was repealed by the act of February 8, 1894 (28 Stat., 36), when the sections now under consideration were not touched. Under then existing circumstances this was quite significant. The ground upon which section 4 was held in the Reese case to be ineffectual was (as is sufficiently shown in our extracts from the opinion in the Cruikshank case, where they were also stated, and in a quotation from the opinion in the Reese case, presently to be made) that it applied, in general terms, to all voters, instead of being confined to the colored man and his rights under the fifteenth amendment. For this reason, and because the court was thereby rendered unable to separate its constitutional application from its unconstitutional, the whole section was condemned. Up to this point the Supreme Court had never expressed itself upon what are now sections 2004, 5507, 5508, and 5509 of the Revised Statutes; but in U. S. v. Harris, 106 U. S., at page 637, 1 Sup. Ct., at page 607, and 27 L. Ed., at page 293, the court did incidentally allude to the subject of at least one of them and said:

"The right guaranteed by the fifteenth amendment is protected by other legislation of Congress, namely, by sections 4 and 5 of the act of May 31, 1870, c. 114, and now embodied in sections 5506, 5507, Rev. St."

A similar observation was made by Mr. Justice Woods in his opinion in the case of Le Grande v. U. S. (C. C.), 12 Fed., 579, in which case it

was held that section 5519, Rev. St., had no reference to rights guaranteed by the fifteenth amendment.

The weight of these remarks is not altogether destroyed by including in them the reference to section 5506, because the modifications of section 4 of the act of 1870, in the opinion of the court in the fourth circuit, in the case of the U. S. v. Munford (C. C.), 16 Fed., 223, relieved section 5506 from the objections taken to the fourth section in the Reese case, and at least brought the legislation within Article I, sec. 4, of the Constitution. See also the very interesting remarks of Judge Hughes in the case of U. S. v. Belvin (C. C.), 46 Fed., 382.

23 Coming now to a consideration of what has been determined respecting the sections involved upon these demurrers, we find it different. Section 5508 is in this language:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise upon the highway, or on the premises of another with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be punished," etc.

In Ex Parte Yarborough, 110 U. S., 651; 4 Sup. Ct., 152; 28 L. Ed., 274, the constitutionality of this section was directly adjudicated, as was that of section 5520, which was afterwards repealed. Yarborough, having been convicted upon an indictment which charged him with violations of those sections, applied to the Supreme Court for a writ of habeas corpus upon the ground that those statutory provisions were unconstitutional. The writ was refused. In passing upon the question, the court, through Mr. Justice Miller, said:

"The fifteenth amendment of the Constitution, by its limitations on the power of the States in the exercise of their right to prescribe the qualifications of voters in their own elections, and by its limitation of the power of the United States over that subject, clearly shows that the right of suffrage was considered to be of supreme importance to the National Government, and was not intended to be left within the exclusive control of the States. . . . While it is quite true, as was said by this court in U. S. v. Reese, 92 U. S., 214; 23 L. Ed., 563, that this article gives no affirmative right to the colored man to vote, and is designed primarily to prevent discrimination against him whenever the right to vote may be granted to others, it is easy to see that under some circumstances it may operate as the immediate source of a right to vote. In all cases where the former slaveholding States had not removed from their constitutions the words 'white man' as a qualification for voting, this provision did, in effect, confer on him the right to vote, because, being paramount to the State law, and a part of the State law, it annulled
24 the dicsriminating word 'white' and thus left him in the enjoyment of the same right as white persons. And such would be the effect of any future constitutional provision of a State which should give the right of voting exclusively to white people, whether they be men or women." (Neal v. Delaware, 103 U. S., 370; 26 L. Ed., 567.) In such cases this fifteenth article of amendment does, proprio vigore, substantially confer on the negro the right to vote, and Congress has the power to protect and enforce that right.

"In the case of U. S. v. Reese, so much relied on by counsel, this court said in regard to the fifteenth amendment that 'it has invested the citizens of the United States with a new constitutional right, which is within the protecting power of Congress. That right is an exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude.' This new constitutional right was mainly designed for citizens of African descent. The principle, however, that the protection of the exercise of this right is within the power of Congress is as necessary to the right of other citizens to vote as to the colored citizen, and to the right to vote in general as to the right to be protected against discrimination. The exercise of the right in both instances is guaranteed by the Constitution, and should be kept free and pure by Congressional enactments whenever that is necessary. The reference to cases in this court in which the power of Congress under the first section of the fourteenth amendment has been held to relate alone to acts done under State authority can afford petitioners no aid in the present case; for while it may be true that acts which are mere invasions of private rights, which acts have no sanction in the statutes of a State, or which are not committed by anyone exercising its authority, are not within the scope of that amendment, it is quite a different matter when Congress undertakes to protect the citizen in the exercise of rights conferred by the Constitution of the United States, essential to the healthy organization of the Government itself."

And on page 667, 110 U. S.; page 160, 4 Sup. Ct., and page 279, 28 L. Ed., the court continues:

"If the recurrence of such acts as these prisoners stand convicted of are too common in one quarter of the country and give omen of danger from lawless violence, the free use of money in elections, arising from the vast growth of recent wealth in other quarters, presents equal cause for anxiety. If the Government of the United States has within its constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption or controlled by violence and outrage without legal restraint, then, indeed, is the country in danger and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it are at the mercy of the combinations of those who respect no right but brute force on the one hand, and unprincipled corruptionists on the other."

Again, in Logan *v.* U. S., 114 U. S., 263, 12 Sup. Ct., 617, 36 L. Ed., 429, the constitutionality of sections 5508 and 5509 was directly adjudicated. Mr. Justice Gray, after reviewing all the cases in stating the opinion of the court, and while distinguishing the facts of that case from others, on pages 293 and 294, 144 U. S., page 626, 12 Sup. Ct., and page 439, 36 L. Ed., said:

"The whole scope and effect of this series of decisions is that while certain fundamental rights, recognized and declared, but not granted or created, in some of the amendments to the Constitution are thereby guaranteed only against violation or abridgment by the United States or by the States, as the case may be, and can not, therefore, be affirmatively enforced by Congress against unlawful acts of individuals, yet that every right created by, arising under, or dependent upon the Con-

stitution of the United States may be protected and enforced by Congress by such means and in such manner as Congress, in the exercise of the correlative duty of protections, or of the legislative powers conferred upon it by the Constitution, may, in its discretion, deem most eligible and best adapted to attain the object. Among the particular rights which this court, as we have seen, has adjudged to be secured, expressly or by implication, by the Constitution and laws of the United States, and to be within section 5508 of the Revised Statutes, providing for the punishment of conspiracies by individuals to oppress or injure citizens in the free exercise and enjoyment of rights so secured, are the political
26 right of a voter to be protected from violence while exercising his right of suffrage under the laws of the United States, and the private right of a citizen, having made a homestead entry, to be protected from interference while remaining in the possession of the land for the time of occupancy which Congress has enacted shall entitle him to a patent."

The section was also held constitutional in the case of In re Quarles, 158 U. S., 535, 15 Sup. Ct., 959, 39 L. Ed., 1080.

But these cases do not quite reach the exact point under consideration, however clearly they establish the general proposition that section 5508 is constitutional. It becomes necessary, therefore, to go further. In doing so we find that the able statesmen in Congress who were endeavoring to legislate to carry into effect the fifteenth amendment framed, and Congress passed, what is now section 2004 of the Revised Statutes, as follows:

"All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude, any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."

We think this is appropriate legislation, that it is within the constitutional power of Congress, that it is adapted to the end in view, and that it must be read in connection with section 5508.

It is urged with much zeal in respect to both indictments that the many adjudged cases which hold that the fourteenth amendment operates only as an inhibition upon the States and not individuals in respect to the matters therein embraced must control the construction of the fifteenth amendment also upon the same grounds. The court does not yield to this view, but accepts that of Justice Bradley, in passing upon the Cruikshank case at the circuit, in the language previously quoted. And in the Reese case, 92 U. S., 218, 23 L. Ed., 565, the court, after saying that Article I, sec. 4, was not under consideration, used this significant language:

27 "It has not been contended, nor can it be, that the amendment confers authority to impose penalties for every wrongful refusal to receive the vote of a qualified elector at State elections. It is only when the wrongful refusal at such an election is because of race, color, or previous condition of servitude that Congress can interfere and

provide for its punishment. If, therefore, the third and fourth sections of the act are beyond that limit, they are unauthorized."

These considerations appear to us to be decisive of the demurrer in that one of the cases now before us in which the indictment is based upon section 5508. Indeed, as it cannot be doubted that the right of the colored man to vote is "secured" by the Constitution of the United States, in the sense of that word as used in that section, and especially when it is construed in connection with section 2004, the question is no longer open to argument. If that right is not "secured" in that way, it rests upon no security whatever.

We now come to section 5507, upon which the other indictment is based, and which is in this language:

"Every person who prevents, hinders, controls, or intimidates another from exercising or in exercising the right of suffrage, to whom that right is guaranteed by the fifteenth amendment to the Constitution of the United States, by means of bribery, or threats of depriving such person of employment or occupation or of ejecting such person from a rented house, lands, or other property, or by threats of refusing to renew leases or contracts for labor, or by threats of violence to himself or family, shall be punished as provided in the preceding section."

Is this "appropriate" legislation, and within the power of Congress, under section 2 of the fifteenth amendment? We think a test has been established for our guidance in reaching a conclusion upon that question. The Constitution had granted Congress power to pass all laws "necessary and proper" to carry into effect the other powers given by that instrument. It will be admitted that the words "necessary and proper" are stronger than the word "appropriate," as used in the section just referred to. Yet Chief Justice Marshall said:

28 "We admit, as all must admit, that the powers of the Government are limited and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the National Legislature that discretion with respect to the means by which the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are prohibited, but consist with the letter and spirit of the Constitution, are constitutional." McCulloch v. Maryland, 4 Wheat., 421, 4 L. Ed., 605.

Tested by this rule, we are now to determine whether Congress had the constitutional power to enact this particular legislation which it deemed appropriate to enforce the amendment. Of course it cannot be said that the decision of Congress in the premises is necessarily final, and for that reason, I have endeavored to find the test by which the matter was to be judged. If it is not found in 4 Wheat., 4 L. Ed., and in the cases which follow that authority, and which are collected in I Notes on U. S. Reports, 872 et seq., it cannot be found at all. We are clearly of opinion that the rule is applicable to this case and that it must be followed. The plain and manifest intention of Congress, as avowed and expressed in sections 2004 and 5507 was to prevent, by the means therein indicated, any abridgement of the free exercise of the right to vote guaranteed by

the fifteenth amendment by means of bribery, threats, or intimidation. That was the sole intention. There was no other. The end was legitimate. The purpose was within the scope of the fifteenth amendment. The means are plainly adapted to that end, and are not prohibited, but consist with the letter and spirit of that amendment.

Possibly we may get additional light upon the question by going back somewhat and viewing it from another standpoint. Section 4 of the act of 1870, and which was considered in the Reese case, is as follows:

"That if any person, by force, bribery, threats, intimidation, or other unlawful means, shall hinder, delay, prevent, or obstruct, or shall
29 combine and confederate with others to hinder, delay, prevent, or obstruct any citizen from doing any act required to be done to qualify him to vote or from voting at any election as aforesaid, such person shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case with full costs, and such allowances for counsel fees as the court shall deem just, and shall also for every such offense be guilty of a misdemeanor, and shall on conviction thereof be fined," etc.

In direct reference to this language, the Supreme Court said (92 U. S., 220, 221; 23 L. Ed., 565, 566):

"But when we go beyond the third section, and read the fourth, we find there no words of limitation or reference, even, that can be construed as manifesting any intention to confine its provisions to the terms of the fifteenth amendment. That section has for its object the punishment of all persons who, by force, bribery, etc., hinder, delay, etc., any person from qualifying or voting. In view of all these facts, we feel compelled to say that, in our opinion, the language of the third and fourth sections does not confine their operation to unlawful discrimination on account of race, etc. If Congress had the power to provide generally for the punishment of those who unlawfuliy interfere to prevent the exercise of the elective franchise, without regard to such discrimination, the language of these sections would be broad enough for that purpose. It remains now to consider whether a statute so general as this in its provisions can be made available for the punishment of those who may be guilty of unlawful discrimination against citizens of the United States, while exercising the elective franchise, on account of their race, etc. There is no attempt in the sections now under consideration to provide specifically for such an offense. If the case is provided for at all, it is because it becomes under the general prohibition against any wrongful act or unlawful obstruction in this particular. We are therefore directly called upon to decide whether a penal statute enacted by Congress, with its limited powers, which is in general language broad enough to cover wron'ful acts, without as well as within the constitutional jurisdiction, can be limited by judicial construction so as to make it operate only on that which
30 Congress may rightfully prohibit and punish. For this purpose we must take these sections of the statute as they are. We are not able to reject a part which is unconstitutional, and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there. Each of the sections must

stand as a whole, or fall altogether. The language is plain. There is no room for construction unless it be as to the effect of the Constitution. The question then to be determined is whether we can introduce words of limitation into a penal statute, so as to make it specific, when, as expressed, it is general only. It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the Government. The courts enforce the legislative will when ascertained, if within the constitutional grant of power. Within its legitimate sphere Congress is supreme and beyond the control of the courts; but if it steps outside of its constitutional limitations, and attempts that which is beyond its reach, the courts are authorized to and when called upon in due course of legal proceedings, must annul its encroachments upon the reserved power of the States and the people. To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty. We must therefore decide that Congress has not as yet provided 'appropriate legislation' for the punishment of the offense charged in the indictment."

That is to say, Congress has not provided for that case. It was, however, by no means intended to be said that Congress had not provided for the punishment of the very different offense charged in the indictment we are now considering.

When we turn from this section to section 5507, Rev. St., we find that it is not framed in such general terms as to include as well offenses which may be constitutionally provided against as those which may not—
the only vice which led to the condemnation of section 4 of the
31 act of 1870. On the contrary, section 5507 is so phrased that by no possibility could anyone be punished except for doing such an act as would deny or abridge the right of a colored man to vote freely as he pleased. The reason this is so is that this section is expressly limited to those to whom that right is guaranteed by the fifteenth amendment. The language of this section admits of no construction that would punish the obstructing of a white man's vote, except on the ground of race or color, in which event (though in fact it is inconceivable in our social condition) he would be as much entitled to the benefit of the fifteenth amendment as the negro is now. At all events, the whole scope of section 5507 appears plainly to be within the intent of the fifteenth amendment, and to have the purpose to make section 2004 affective. There is therefore no occasion for an attempt as there was in reference to section 4, to separate what was within the power of Congress from what was not. The effort would be vain, inasmuch as the object was single. This conclusion is inevitable when we compare the two sections in the light of what is said in 92 U. S. at page 221, and 23 L. Ed. at page 566, as copied above; and this may further indicate why the reasoning of the Yarb'rough case, and not that in the Reese case controls those we are now considering.

Undoubtedly the general right to vote existed long before the adoption of the fifteenth amendment, because it sprung up in the remote past with the genesis of free government by the people, but, so far as the colored

man is concerned, the right not only originated, but is "guaranteed" by that amendment, as that word is used in section 5507; that is to say, that amendment guarantees that that right shall not be denied or abridged on account of race, color, or previous condition of servitude. This section of the statute was intended to enforce and protect that right by appropriate legislation which may extend to punishing those who seek to deny or abridge it upon those grounds. Ex parte Yarborough 110 U. S., 657; 4 Sup. Ct., 152; 28 L. Ed., 264. Section 4 and other sections were held to be unconstitutional, because they referred to the right of everybody to vote and were not confined to the right as guaranteed by the fifteenth amendment. The court held that Congress did not have power to legislate so generally upon the subject of
32 voters and their rights. Neither the reasoning nor the decisions apply, however, to cases where, by the express provisions of the statute, the legislation is limited to cases of persons whose violated rights are guaranteed by that amendment. Sections 2004 and 5507 are so limited, and they supplement one another. Indeed, it is difficult in Kentucky to conceive that the right of suffrage was not directly conferred upon the colored man by the fifteenth amendment, notwithstanding the statement to the contrary in the Reese case. The difficulty, moreover, is increased when we read the language used by Mr. Justice Harlan in delivering the opinion of the court in Neal v. Delaware, 103 U. S., 388, 389; 26 L. Ed., 567, and especially when we recur to the remark of Mr. Justice Miller in the Yarborough case, 110 U. S., 665; 4 Sup. Ct., 159; 28 L. Ed., 278, where, in speaking of States in whose constitutions the word "white" remained, he said:

"In such cases this fifteenth article of amendment does, proprio vigore, substantially confer on the negro the right to vote, and Congress has the power to protect and enforce that right."

It is incontrovertibly true that at all times prior to September, 1891, and to the constitution then adopted, the negro was excluded by our State laws from the right to vote. From 1850 to September, 1891, the word "white" remained in that provision of the State constitution which fixed the qualifications of voters. Yet so certainly did the fifteenth amendment confer the right of suffrage upon the negro that in Kentucky from March, 1870, forward he voted precisely as the white man did in spite of the State constitution. To say the very least, the nation indirectly conferred upon the negro the right to vote by directly and expressly forbidding that that right should be denied or abridged on account of race, color, or previous condition of servitude, and it gave Congress the power to protect and guard the right thus bestowed. Congress plainly exercised that power by the legislation referred to. This was not grudgingly done by the American people or by Congress. It was done as a matter of supreme national concern and to meet what were decided to be the ends of national justice. The courts are not called upon, in the interest of wrongdoing, to fritter away by narrow or frivolous construction the safeguards of this great right so carefully bestowed. That Congress, in enacting remedial criminal legislation, is not hampered by the
33 narrow limitations contended for is shown by what is so admirably expressed by Mr. Justice Miller in the Yarborough case, where, on pages 657, 658, 110 U. S., page 155, 4 Sup. Ct., and page 276, 28 L. Ed., he says:

"That a government whose essential character is republican, whose executive head and legislative body are both elective, whose most numerous and powerful branch of the legislature is elected by the people directly, has no power by appropriate laws to secure this election from the influence of violence, of corruption, and of fraud, is a proposition so startling as to arrest attention and demand the gravest consideration. If this Government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the General Government, it must have the power to protect the elections on which its existence depends from violence and corruption. If it has not this power, it is left helpless before the two great natural and historical enemies of all republics, open violence and insidious corruption. The proposition that it has no such power is supported by the old argument, often heard, often repeated, and in this court never assented to, that, when a question of the power of Congress arises, the advocate of the power must be able to place his finger on words which expressly grant it. The brief of counsel before us, though directed to the authority of that body to pass criminal laws, uses the same language. Because there is no express power to provide for preventing violence exercised on the voter as a means of controlling his vote, no such law can be enacted. It destroys at one blow, in construing the Constitution of the United States, the doctrine universally applied to all instruments in writing—that what is implied is as much a part of the instrument as what is expressed. This principle, in its application to the Constitution of the United States, more than to almost any other writing, is a necessity, by reason of the inherent inability to put into words all derivative powers—a difficulty which the instrument itself recognizes by conferring on Congress the authority to pass all laws necessary and proper to carry into execution the powers expressly granted, and all other powers vested in the Government, or any branch of it, by the Constitu-
34 tion. Article I, sec. 8, cl. 18. We know of no express authority to pass laws to punish theft or burglary of the Treasury of the United States. Is there, therefore, no power in the Congress to protect the Treasury by punishing such theft and burglary? Are the mails of the United States and the money carried in them to be left to the mercy of robbers and of thieves who may handle the mail, because the Constitution contains no express words of power in Congress to enact laws for the punishment of those offenses? The principle, if sound, would abolish the entire criminal jurisdiction of the courts of the United States, and the laws which confer that jurisdiction."

This demonstrates that it was in no way essential to use the words "race, color, or previous condition of servitude" in order to make section 5507 constitutional. It being obvious from the language actually employed that Congress thereby meant to enforce the fifteenth amendment, the only question was, is the plan provided by this section an appropriate way to accomplish the result? That it is, at least, adapted to that end, seems clear. All that is required is that the legislation shall come within the scope of the power to enforce the amendment. It is not essential that the language of the statute shall be the same as that of the amendment. For example the statutes of the United States make the act of robbing the mails a criminal offense. There is not a word in

the Constitution about such an offense. But that instrument does give Congress the power to establish post-offices and post-roads, and it does authorize Congress to pass all laws necessary and proper to carry that power into effect. Punishment for robbing the mails is indispensable to that end. But an indictment need not, in its averments, reason this out. The courts do that. U. S. vs. Ajona, 120 U. S. 488, 7 Sup. Ct., 628, 30 L. Ed., 728. Other cases illustrative of this may be found in I Notes on U. S. Reports, 872 et seq. In attempting to enforce and protect the colored man's right to vote, it is obvious that Congress was utterly powerless to pass any law that could operate upon States as such. It could only enforce the rights of voters as given by the fifteenth amendment by punishing individuals who attempt to invade, impair, or destroy it. U. S. v. Reese, 92 U. S., 218; 23 L. Ed., 563, and U. S. v.
35 Cruikshank, 25 Fed. Cas., 713. If Congress could not do this, if section 2 of the amendment does not authorize this, then that section was a vain thing, for in no other general manner could Congress appropriately legislate to that end. We adopt the language of Mr. Justice Bradley on this subject, in the Cruikshank case, first quoted above, as being incontrovertibly sound. The legislation in question was designed and intended to protect the right given by the amendment, by prescribing punishments for attempts upon the part of individual persons to deny or to abridge the right to vote as guaranteed by a constitutional amendment, which forbade any abridgement. The purpose of the statute being such, and it being thus limited in scope, the question of its mere wisdom or efficiency was exclusively within the discretion and judgment of Congress, as decided in McCulloch v. Maryland and many succeeding cases, and there appears to be nothing in Williams v. Mississippi, 170 U. S., 213, 18 Sup. Ct., 583, which has any contrary bearing.

It is insisted, also, upon the part of the defendants, that the offenses actually charged in the indictments are not embraced by any proper construction of the statutes, because, first, the right alleged to have been injured was not one which was "secured" by any law of the United States; and, second, because the things done and which are charged to be offenses did not touch any right or interest of the United States, but only those of the State of Kentucky, and hence no crime was committed. A critical inspection of the statutes and of the indictments leads to the conclusion that these objections, while plausible, are not sound. Neither the fifteenth amendment, nor the statute to enforce it, was intended, in any primary sense, to protect any interest of the United States. The great direct and fundamental object was to secure for the colored man an equal participation with the white man in the inestimable individual and personal privilege of voting and having a voice in the affairs of government, and what we have already said sufficiently indicates that our view is that the right of the colored man to vote is "secured" to him by the laws of the United States, within the sense of that word as used
36 in section 5508. This is done by the amendment and by section 2004, Rev. St., passed to enforce it. The court has by no means overlooked the opinion of Judge Gresham in the case of U. S. vs. Amsden (D. C.), 6 Fed., 819, which held section 5507 to be unconstitutional. That case is not followed because, in our judgment, it does not appear to have been ruled according to the views of the Supreme Court, either in the

Yarborough case or in the Rese case. Indeed, if the views of that learned judge, as there expressed, are to prevail, the fifteenth amendment is far less important, and far less adapted to the objects its framers had in view than might have been inferred from the tremendous struggle for its adoption, and the matter had probably as well have been left with the States altogether. Opposed to what he said, it seems to us that the phrase, "to whom the right of suffage is guaranteed by the fifteenth amendment" as used in section 5507, when properly construed does the very thing which he thought it did not, and in the light, especially of the Yarborough case, if not, indeed, of the Reese case itself, entirely exempts that section from the criticism passed upon section 4 of the enforcement act by the court in the Reese case. Differing from Judge Gresham, we can not doubt that the use of the words, "to whom the right of suffrage is guaranteed by the fifteenth amendment" in section 5507, shows conclusively that the sole intention of congress was to enforce and protect the rights of the colored man to vote, and clearly limits the legislation to that legitimate and constitutional end. In short, it seems to us that the general conclusions to be drawn from the authorities are (1) that the fifteenth amendment was meant to guarantee and secure to the negro, as such, the same right to vote that the white man, as such, has; (2) that Congress has the power by legislation to enforce and protect that right; (3) that any legislation having that sole object in view, if adapted to that end, if consistent with that object, and not otherwise forbidden by the Constitution, is within the power of Congress; and (4) that section 5507 comes within these principles, and is a valid exercise of the power of that body.

The right of the colored man to vote had its only source in, and is most certainly in, the language of Justice Gray in the Logan case, 144 U. S., 263, 12 Sup. Ct., 617, 36 L. Ed., 429, "dependent upon" the fifteenth amendment, which, beyond doubt, not only created that
37 right for him, but which at the same time gave to Congress the power, and, morally at least, imposed upon it the duty to enforce and protect it by legislation. Sections 2004, 5507, 5508, and 5509 may not, by any means, be entirely adequate for the purpose, but they are all that is left, and should not be hastily swept away by the courts. The three sections, at least, which are now before us for consideration appear to be appropriate and valid. The Supreme Court in several cases, as we have seen, having refused upon the clearest principles to declare section 5508 unconstitutional, we are not only bound by that ruling, but must decline to hold that section 5507 is void, because it seems to the court that there are, if possible, even less grounds for so holding that there might be as to section 5508. It will be observed that section 5507 fixes the penalties for the offenses therein created by providing that they shall be the same as those "prescribed in the preceding section." As section 5506 was repealed by the act of 1894, it is contended that there is no punishment left for the offenses named in section 5507, thereby leaving the section ineffectual. It must be seen, however, that the real intention of Congress in the act of 1894 was twofold, viz, (1) to repeal section 5506, and (2) not to repeal section 5507. But the contention of counsel, if sustained, must lead to a result plainly different from that evidently contemplated by Congress, to wit, the repeal of one and the emasculation of the other. The difficulty can be easily removed upon a

just principle of construction which will effectuate both of the objects Congress had in view, by holding that the repeal of section 5506 in nowise obliterated the record of the language used in prescribing the penalties for offenses which were no longer to be such, but left it still known and ascertainable, and in full effect, so far as it was by reference made a part of section 5507 and necessary for its construction and effectiveness. As to the mere penalties prescribed, section 5506 is, and always was, a part of section 5507, and to that extent and for that purpose is not repealed. The indictment under section 5508 charges that on November 7, 1899, a general election for State officers within the State of Kentucky was held under and in accordance with the laws of said State, and a poll was then and there opened, and an election was then and there
38 legally had and held, in each voting precinct in said State, in each of which said voting precincts persons were then and there lawfully voted for by the legal voters therein for said State officers, and that at a certain named precinct certain named persons and divers other parties to the grand jurors aforesaid unknown, were then and there, as the defendants well knew, colored men, negroes, men of African descent, and not white men, male citizens of the United States, and as the defendants well knew, citizens and residents of said voting precinct, 21 years of age, and had been citizens and residents of said precinct for more than 60 days, and of said county in which said precinct is located for more than 6 months, and of the said State for more than 1 year next preceding said election, and were then and there, as defendants well knew, under the laws of the United States and the laws of the State of Kentucky, legally entitled to vote for persons for said State offices; that said voters at the time and place aforesaid presented themselves with the intention and for the purpose of voting, and demanded of the officers of said precinct permission to vote; that the defendants, knowing all of the aforesaid facts, did then and there unlawfully, knowingly, and feloniously conspire, confederate, combine, and agree together and each of them with the other, and they and each of them with divers other parties to the grand jurors aforesaid unknown, to injure, oppress, threaten, and intimidate said voters, on account of their race, color, and previous condition of servitude, in the free exercise and enjoyment of a right and privilege which they then and there had, and which was then and there secured to them by the Constitution and laws of the United States, of then and there voting for persons to fill offices at said precinct, and that in pursuance of said conspiracy, and to effect the purpose and object thereof, the defendants then and there unlawfully, willfully, corruptly, and maliciously injured, oppressed, threatened, intimidated, and prevented the said voters from voting in said precinct on said election day. It is contended that this is not good, because it does not charge in terms that the right injured is "the right not to be discriminated against on account of race," etc. That language, however, is the language of the courts, and not that used either in the amendment or in sections 2004 or 5508, a fact which the contention overlooks. If such discrimination be in sub-
39 stance and effect charged, as we think is the case here, it is sufficient, although that word is not used in making the accusation. Construing the constitutional and statutory provisions together, the indictment seems to be good, and to charge that the accused conspired to injure certain colored men in the exercise of the right to vote,

who were otherwise legally qualified to do so, on account of their race and color—they having that right in the sense that it is "secured" to them by the amendment and section referred to—which conspiracy is an offense against the United States, for which section 5508 fixes the penalty.

Only one thing remains to be noticed. It is urged against the indictment, under section 5507, that the offense charged is mere bribery at a State election, and that the State courts alone have jurisdiction. This contention does not seem to be very material, because, while doubtless the State could also punish such an offense, it by no m'ans follows that the National Government may not do it also in proper cases. There are many instances where the same acts and offenses against the laws both of the State and of the United States, probably the most conspicuous example of which is the offense of passing counterfeit money. Bribery at an election may be made an offense by the State, and if that were all that had been done, this court could not enforce the law. But in at'empting to enforce the fifteenth amendment and to prevent the abridgement of the right to vote on account of race or color, Congress has made it an offense against the United States to influence or control the vote of a colored man by means of bribery. Of this offense thus created, and as charged in the indictment, the Federal courts alone have jurisdiction. For these reasons it seems to the court that the demurrers and motions to quash should be overruled.

40 The views thus expressed were by no means lightly formed, and I can not rid myself of the conviction that they are correct, and that section 5507 is appropriate legislation to enforce the 15th amendment to the Constitution. However, upon a writ of error to the circuit court of appeals that court took a radically different view of the question, and reversed the judgment I had rendered. The opinion of that court will be found in the case of Lackey v. United States, 107 Fed. Rep., 114.

Some suggestion has been made that the indictment in the Lackey case had reference to a mere State election, and that a different rule might apply here where the election was for a Representative in Congress, but I am clearly of the opinion that such a distinction is wholly unfounded, and that the operation of the 15th amendment is not limited to Congressional elections, but obviously extends to all elections where the elective franchise is exercised in public affairs. And, further, it seems to me that one of the most effective ways to "control" or "hinder" the free exercise of that right is "by means of bribery," which section 5507 is designed to prevent.

It is therefore not now a question of whether I am convinced of the accuracy of the judgment of the circuit court of appeals, because whether so or not, I must follow it. It is my duty, as I interpret it, to follow that opinion, and in doing so I am led to the result that the petitioner must be discharged, and an order to that effect will accordingly be entered.

Nov. 16, 1901.

WALTER EVANS, *Judge.*

41 And on the 23rd day of November, 1901, came the respondent, A. D. James, United States marshal for the western district of

Kentucky, and the United States of America, by R. D. Hill, United States attorney, and filed a petition for an appeal herein, together with an assignment of errors, and thereupon, on 'heir motion, it is ordered that an appeal be allowed herein to the United States Supreme Court.

The petition for appeal and assignment of errors above referred to are as follows:

42 District court of the United States for the western district of Kentucky.

In the matter of Henry Bowman.

PETITION FOR APPEAL

To the Honorable Walter Evans, judge of the above-named court, presiding therein.

The respondent, A. D. James, United States marshal for the western district of Kentucky, feeling himself aggrieved, and the United States of America, feeling themselves aggrieved by the judgment, decision, and decree made and entered by the above-named court in the above-entitled matter under date of November 16th, 1901, wherein and whereby it was considered, adjudged, and decreed that the imprisonment and detention of the relator, Henry Bowman, by the respondent, A. D. James, United States marshal for the western district of Kentucky, as aforesaid, was in violation of the Constitution and laws of the United States, and that he, the said Henry Bowman, be discharged and go hence without day, hereby pray an appeal to the Supreme Court of the United States from said judgment, decision, and decree for the reasons set forth in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said decision and judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

R. D. Hill,
United States Attorney for the Western District of Kentucky,
Attorney for the Respondent and the U. S.

November 22nd, 1901.

The foregoing claim of appeal is allowed.

Walter Evans,
United States District Judge for the Western District of Kentucky.

November 23, 1901.

43 The assignment of errors above referred to is as follows:

District court of the United States for the western district of Kentucky.

In the matter of Henry Bowman.

ASSIGNMENT OF ERRORS.

And now, on the 22nd day of November, 1901, comes the said A. D. James, United States marshal for the western district of Kentucky, by

R. D. Hill, United States district attorney for the western district of Kentucky, his solicitor, came also the United States by said Hill, U. S. Atty., as aforesaid, and say that the decree in the said case is erroneous and against the just rights of the said A. D. James and the United States, for the following reasons:

1st. Because the court erred in holding, decreeing, and adjudging that the said Henry Bowman was in the custody of the respondent, A. D. James, United States marshal for the western district of Kentucky, in violation of the Constitution and laws of the United States, and in discharging the said prisoner from the custody of said respondent, A. D. James, United States marshal as aforesaid.

2nd. Because the said decree, decision, and judgment of the court is contrary to law and the Constitution of the United States.

3rd. Because the court erred in holding, decreeing, and adjudging that section 5507 of the Revised Statutes of the United States was and is in violation of the Constitution of the United States and therefore void, and on that account the imprisonment and detention of the said Henry Bowman by respondent, A. D. James, United States marshal as aforesaid, was in violation of the Constitution and laws of the United States, and in discharging the said prisoner, Henry Bowman, from the custody of said A. D. James, marshal as aforesaid.

Wherefore respondent and appellant, A. D. James, marshal as aforesaid, and the United States pray that the decree, decision, and judgment be reversed, and that said district court be directed to enter all such decrees and judgments as may be necessary in the premises.

R. D. Hill,
United States Attorney for the Western District of Kentucky.
Attorney for Respondent and the United States.

44 Western District of Kentucky, *ss:*

I, Thomas Speed, clerk of the district court of the United States for the western district of Kentucky, at Louisville, do hereby certify that the foregoing 43 pages contain a true and correct transcript of the record and proceedings in the matter of Henry Bowman, ex parte, as the same appears from the files and records in my said office.

Witness my hand and seal of said court this 5th day of December, A. D. 1901.

[seal.]

Thos. Speed, *Clerk.*
By Henry F. Cassin, *D. C.*

45 United States of America, western district of Kentucky, sixth judicial circuit.

To Henry Bowman, greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court to be holden at the city of Washington, D. C., on the 21st day of December next, pursuant to an appeal granted by the district court of the United States for the western district of Kentucky, wherein A. D. James, United States marshal for the western district of Kentucky & the United States of America are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why

the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, this 23rd day of November, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the one hundred and twenty-sixth.

[SEAL.] WALTER EVANS, *Judge.*

46 Service of the written citation accepted this 29th day of November, 1901.

WM. B. DIXON,
Attorney for Henry Bowman.

(Indorsement on cover:) File No., 18357. W. Kentucky D. C. U. S. Term No., 213. A. D. James, U. S. marshal for the the western district of Kentucky and the United States, appellants, vs. Henry Bowman. Filed, December 20, 1901.

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